

1 **BLUMENTHAL NORDREHAUG BHOWMIK**
2 **DE BLOUW LLP**

3 Norman B. Blumenthal (State Bar #068687)

4 Kyle R. Nordrehaug (State Bar #205975)

5 Aparajit Bhowmik (State Bar #248066)

6 2255 Calle Clara

7 La Jolla, CA 92037

8 Telephone: (858)551-1223

9 Facsimile: (858) 551-1232

10 Email: norm@bamlawca.com

11 Website: www.bamlawca.com

12 Attorneys for Plaintiff

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 MATTHEW TRAVIS, an individual, on
16 behalf of himself and on behalf of all
17 persons similarly situated,

18 Plaintiff,

19 vs.

20 ALTO PHARMACY LLC, a Limited
21 Liability Company; DOES 1 through 50,
22 inclusive,

23 Defendants.

Case No. CGC-22-601836

[Consolidated with Case No. CGC-22-601841]

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS SETTLEMENT**

Hearing Date: November 2, 2023

Hearing Time: 9:30 a.m.

Judge: Hon. Richard B. Ulmer

Dept: 302

Date Filed: September 16, 2022

Trial Date: Not set

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	DESCRIPTION OF THE SETTLEMENT.....	2
III.	CASE BACKGROUND.....	5
IV.	THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO GRANT PRELIMINARY APPROVAL	5
A.	The Role Of The Court In Preliminary Approval Of A Class Action Settlement	6
B.	Factors To Be Considered In Granting Preliminarily Approval.....	7
1.	The Settlement is the Product of Serious, Informed and Arm's Length Negotiations by Experienced Counsel.....	8
2.	The Settlement Has No "Obvious Deficiencies" and Falls Within the Range for Approval.....	10
3.	The Settlement Does Not Improperly Grant Preferential Treatment To Class Representatives or Segments Of The Class	13
4.	The Stage Of The Proceedings Are Sufficiently Advanced To Permit Preliminary Approval Of The Settlement	13
V.	THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES	15
A.	California Code of Civil Procedure § 382	15
B.	The Proposed Class Is Ascertainable and Numerous	15
C.	Common Issues of Law and Fact Predominate.....	16
D.	The Claims of the Plaintiffs Are Typical of the Class Claims	16
E.	The Class Representation Fairly and Adequately Protected the Class.....	17
F.	The Superiority Requirement Is Met	17
VI.	THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE	18
VII.	CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases:

Page:

<i>Brinker v. Superior Court</i> , 53 Cal. 4th 1004 (2012)	11
<i>Boggs v. Divested Atomic Corp.</i> , 141 F.R.D. 58 (S.D. Ohio 1991)	17
<i>Bowles v. Superior Court</i> , 44 Cal.2d 574 (1955)	15
<i>Boyd v. Bechtel Corp.</i> , 485 F.Supp. 610 (N.D. Cal. 1979)	7
<i>Cacho v. Eurostar, Inc.</i> , 43 Cal. App. 5th 885 (2019)	12
<i>Cellphone Termination Fee Cases</i> , 180 Cal.App.4th 1110 (2009)	5
<i>Cho v. Seagate Tech. Holdings, Inc.</i> , 177 Cal. App. 4th 734 (2009)	6
<i>Dunk v. Ford Motor Co.</i> , 48 Cal.App.4th 1794 (1996)	5, 6, 8
<i>Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)</i> , 213 F.3d 454 (9 th Cir. 2000)	11, 12, 14
<i>Duran v. U.S. Bank National Assn.</i> , 59 Cal. 4th 1 (2014)	12
<i>Frazier v. City of Richmond</i> , 184 Cal.App.3d 1491 (1986)	5
<i>Gautreaux v. Pierce</i> , 690 F.2d 616 (7th Cir. 1982)	5
<i>Ghazaryan v. Diva Limousine, Ltd.</i> , 169 Cal. App. 4th 1524 (2008)	16
<i>Glass v. UBS Fin. Servs.</i> , 2007 U.S. Dist. LEXIS 8476 (N.D.Cal. 2007)	12, 13, 14
<i>Green v. Obledo</i> , 29 Cal.3d 126 (1981)	5
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9 th Cir. 1998)	11, 16, 17
<i>Holman v. Experian Info. Solutions, Inc.</i> , 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014)	13

1	<i>In re Tableware Antitrust Litig.</i> ,	
2	484 F.Supp. 2d 1078 (N.D. Cal. 2007)	7
3	<i>In re Wash. Public Power Supply System Sec. Litig.</i> ,	
4	720 F. Supp. 1379 (D. Ariz. 1989)	7, 9
5	<i>Kirkorian v. Borelli</i> ,	
6	695 F. Supp. 446 (N.D. Cal. 1988)	7
7	<i>Kullar v. Foot Locker</i> ,	
8	168 Cal. App. 4th 116 (2008)	8
9	<i>Linder v. Thrifty Oil Co.</i> ,	
10	23 Cal. 4th 429 (2003)	16
11	<i>Lockheed Martin Corp. v. Superior Ct.</i> ,	
12	29 Cal. 4th 1096, 1108 (2003)	11
13	<i>Louie v. Kaiser Foundation Health Plan, Inc.</i> ,	
14	2008 WL 4473183 (S.D.Cal. 2008)	13
15	<i>Ma v. Covidien Holding, Inc.</i> ,	
16	2014 WL 2472316, (C.D. Cal. 2014)	11
17	<i>Mathein v. Pier 1 Imps. (U.S.), Inc.</i> ,	
18	2018 U.S. Dist. LEXIS 71386 (E.D. Cal. 2018)	13
19	<i>Nat'l Rural Telecomms. Coop. v. DIRECTV, Inc.</i> ,	
20	221 F.R.D. 523 (C.D. Cal. 2004)	7
21	<i>Nordstrom Comm'n Cases</i> ,	
22	186 Cal. App. 4th 576 (2010)	5, 10
23	<i>Officers for Justice v. Civil Service Com'n, etc.</i> ,	
24	688 F.2d. 615 (9th Cir. 1982)	5, 6, 7
25	<i>Rose v. City of Hayward</i> ,	
26	126 Cal.App.3d 926 (1981)	15
27	<i>Salazar v. See's Candy Shops Inc.</i> ,	
28	64 Cal.App.5th 85 (2021)	11
	<i>Sav-On Drug Stores, Inc. v. Superior Court</i> ,	
	34 Cal. 4th 319 (2004)	15, 16, 17
	<i>Sayaman v. Baxter Healthcare Corp.</i> ,	
	2010 U.S. Dist. LEXIS 151997 (C.D. Cal. 2010)	5
	<i>Stovall-Gusman v. W.W. Granger, Inc.</i> ,	
	2015 U.S. Dist. LEXIS 78671 (N.D. Cal. 2015)	11
	<i>Tate v. Weyerhaeuser Co.</i> ,	
	723 F.2d 598 (8th Cir. 1983)	16

1	<i>Valentino v. Carter-Wallace, Inc.</i> ,	
2	97 F.3d 1227 (9th Cir. 1996)	17
3	<i>Vasquez v. Superior Court</i> ,	
4	4 Cal.3d 800 (1971)	5
5	<i>Viceral v. Mistras Grp., Inc.</i> ,	
6	2016 WL 5907869 (N.D. Cal. Oct. 11, 2016).....	11
7	<i>Weinberger v. Kendrick</i> ,	
8	698 F.2d 61 (2d Cir. 1982), <i>cert. denied</i> 464 U.S. 818 (1983).....	6, 7
9	<i>Wershba v. Apple Computer, Inc.</i> ,	
10	91 Cal.App.4th 224 (2001)	6
11	<u>Statutes, Rules and Regulations:</u>	
12	California Code of Civil Procedure §382	14, 15
13	California Labor Code §203	10
14	California Labor Code §226	10
15	California Rules of Court, rule 3.766	19
16	California Rules of Court, rule 3.769	5, 19
17	<u>Secondary Sources:</u>	
18	2 H. Newberg & A. Conte, <i>Newberg on Class Actions</i> (3d ed. 1992)	5, 6, 15
19	<i>Manual For Complex Litigation</i> , (Second), §30.44, 41.43 (1993).....	5
20	3B J. Moore, <i>Moore's Federal Practice</i> §§23.80 - 23.85 (2003)	6
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Matthew Travis (“Plaintiff”) respectfully submits this memorandum in support of the
3 unopposed motion for preliminary approval of the proposed class action settlement with Defendant Alto
4 Pharmacy LLC (“Defendant”), and seeks entry of an order: (1) preliminarily approving the proposed
5 settlement of this class action with Defendant; (2) for settlement purposes only, conditionally certifying
6 the Class, which is comprised of “all individuals who were employed by Defendant in California on
7 a non-exempt basis at any time during the Class Period” of September 16, 2018 through July 3, 2023;
8 (3) provisionally appointing Plaintiff as the representative of the Class; (4) provisionally appointing
9 Norman B. Blumenthal, Kyle R. Nordrehaug, and Aparajit Bhowmik of Blumenthal Nordrehaug
10 Bhowmik De Blouw LLP as Class Counsel for the Class; (5) approving the form and method for
11 providing class-wide notice; (6) directing that notice of the proposed settlement be given to the Class;
12 (7) appointing ILYM Group as the Administrator; and (8) scheduling a final approval hearing date
13 proposed for March 21, 2024 to consider Plaintiff’s motion for final approval of the settlement and
14 entry of the Judgment, and Plaintiff’s motion for approval of attorneys' fees and expenses. Plaintiff and
15 Defendant (collectively the “Parties”) have reached a full and final settlement of the above-captioned
16 action, which is set forth in the Class Action and PAGA Settlement Agreement ("Agreement") filed
17 concurrently with the Court.¹ A copy of the fully executed Agreement is attached as Exhibit #1 to the
18 Declaration of Kyle Nordrehaug (“Decl. Nordrehaug”), served and filed herewith, and the form of the
19 Agreement is the Los Angeles Superior Court model form for class and PAGA settlements.

20 As consideration for this Settlement, the Gross Settlement Amount is One Million Five Hundred
21 Thousand Dollars (\$1,500,000) to be paid by Defendant, as set forth in the Agreement. The Gross
22 Settlement Amount will settle all issues pending in the Action between the Parties and will be made
23 in settlement of the Released Class Claims. The Gross Settlement Amount includes all payments of
24 Individual Class Payments to the Participating Class Members, Administration Expenses Payment,
25 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative
26 Service Payment, and the PAGA Penalties payment. The Gross Settlement Amount does not include

27
28 ¹ Capitalized terms shall have the same meaning as defined in the Agreement.

1 the employer's share of payroll taxes which will be separately paid by Defendant. The Settlement is
2 all-in with no reversion to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶3.

3 The following is a table of the key financial terms of the Settlement and the proposed
4 deductions:

5 **\$1,500,000** (Gross Settlement Amount)

- 6 - \$10,000 (Plaintiff's proposed service award not to exceed \$10,000)
- 7 - \$25,000 (Class Counsel Litigation Expenses Payment - not to exceed amount)
- 8 - \$500,000 (Class Counsel Fees Payment - not to exceed one-third of settlement)
- 9 - \$30,000 (PAGA Penalties payment - 75% to LWDA / 25% to Aggrieved Employees)
- 10 - \$20,000 (Administration Expenses Payment - not to exceed amount)

11 **\$915,000** (Net Settlement Amount)

12 Based upon 1,282 Class Members who collectively worked 57,527 Workweeks (Agreement at ¶4.1),
13 the Gross Settlement Amount provides a value of \$1,170 per Class Member and \$26 per Workweek and
14 after deductions, the Net Settlement Amount provides an average recovery of \$713.72 per Class
15 Member and a recovery of \$15.90 per Workweek. Decl. Nordrehaug at ¶6.

16 On May 3, 2023, the Parties participated in an all-day mediation presided over by Jeff Ross, a
17 respected and experienced mediator of wage and hour class actions. At this mediation, the Parties
18 reached an agreement to settle the Action. Decl. Nordrehaug at ¶5. The Settlement is fair, reasonable
19 and adequate, and should be preliminarily approved because there is a substantial monetary payment,
20 and there are substantial litigation and class-certification risks. Therefore, Plaintiff respectfully
21 requests that this Court grant preliminary approval of the Agreement and enter the proposed order
22 submitted herewith.

23 **II. DESCRIPTION OF THE SETTLEMENT**

24 The Gross Settlement Amount is One Million and Five Hundred Thousand Dollars
25 (\$1,500,000). (Agreement at ¶ 1.22.) Under the Settlement, the Gross Settlement Amount consists of
26 the following elements: (1) payment of the Individual Class Payments to the Participating Class
27 Members; (2) Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment; (3)
28 Administration Expenses Payment; (4) the Class Representative Service Payment to Plaintiff; and (5)
the PAGA Penalties payment. (Agreement at ¶ 1.22.) The Gross Settlement Amount does not include
Defendant's share of payroll taxes. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be all-in
with no reversion to Defendant. (Agreement at ¶ 3.1.) Decl. Nordrehaug at ¶15.

1 Within fourteen (14) days of the Effective Date, Defendant shall deposit the Gross Settlement
2 Amount with the Administrator. (Agreement at ¶ 4.3.) The “Effective Date” is the date by when both
3 the Court enters a Judgment on its Order Granting Final Approval of the Settlement and the Judgment
4 is final. The Judgment is final as of the latest of the following occurrences: (i) if no Participating Class
5 Member objects to the Settlement, the day the Court enters Judgment; (ii) if one or more Participating
6 Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from
7 the Judgment; or (iii) if a timely appeal from the Judgment is filed, the day after the appellate court
8 affirms the Judgment and issues a remittitur. (Agreement at ¶1.19.) The distribution of Individual
9 Class Payments to Participating Class Members along with the other Court-approved distributions shall
10 be made by the Administrator within fourteen (14) days after Defendant fully funds the Gross
11 Settlement Amount. (Agreement at ¶ 5.1.) Decl. Nordrehaug at ¶16.

12 The amount remaining in the Gross Settlement Amount after the deduction of Court-approved
13 amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service
14 Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the
15 Administration Expenses Payment (called the “Net Settlement Amount”) shall be allocated to Class
16 Members as their Individual Class Payments. (Agreement at ¶¶ 1.28 and 3.2.) From the Net Settlement
17 Amount, the Individual Class Payment for each Participating Class Member will be calculated by (a)
18 dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating
19 Class Members during the Class Period and (b) multiplying the result by each Participating Class
20 Member's Workweeks. (Agreement at ¶ 3.2(e).) Workweeks will initially be based on Defendant's
21 records; however, Class Members will have the right to challenge the number of Workweeks. Decl.
22 Nordrehaug at ¶17.

23 Class Members may choose to opt-out of the Settlement by following the directions in the Class
24 Notice. (Agreement at ¶ 8.5, Ex. A.) All Class Members who do not "opt out" will be deemed
25 Participating Class Members who will be bound by the Settlement and will be entitled to receive an
26 Individual Class Payment. (Agreement at ¶ 8.5(c).) All Aggrieved Employees, including those who
27 submit an opt-out request, will still be paid their allocation of the PAGA Penalties and will remain
28 subject to the release of the Released PAGA Claims regardless of their request for exclusion.

1 (Agreement at ¶¶ 6.3 and 8.5(d).) Finally, the Class Notice will advise the Class Members of their right
2 to object to the Settlement and/or dispute their Workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)
3 Decl. Nordrehaug at ¶18.

4 A Participating Class Member must cash his or her Individual Class Payment check within 180
5 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days will
6 be voided and any funds represented by such checks to the California Controller's Unclaimed Property
7 Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements
8 of California Code of Civil Procedure Section 384, subd. (b). (Agreement at ¶ 5.4.) Decl. Nordrehaug
9 at ¶19.

10 Subject to Court approval, the Parties have agreed on ILYM Group to administer the settlement
11 in this action ("Administrator"). (Agreement at ¶ 1.2.) The Administrator will be paid for settlement
12 administration in an amount not to exceed \$20,000. (Agreement at ¶ 3.2(c).) Decl. Nordrehaug at ¶20.

13 Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum not
14 to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment. (Agreement
15 at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class Counsel
16 Litigation Expenses Payment in an amount not to exceed \$25,000. (Agreement at ¶ 3.2(b).) Subject
17 to Court approval, the Agreement provides for a payment of no more than \$10,000 to the Plaintiff as
18 the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) Decl. Nordrehaug at ¶21.

19 Subject to Court approval, Thirty Thousand Dollars (\$30,000) will be paid from the Gross
20 Settlement Amount for PAGA penalties under the California Private Attorneys General Act, Cal. Labor
21 Code Section 2698, *et seq.* ("PAGA"). Pursuant to the express requirements of Labor Code § 2699(i),
22 the PAGA Payment shall be allocated as follows: 75% (\$22,500) shall be allocated to the Labor
23 Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$7,500)
24 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
25 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
26 accompanying proof of service, the LWDA has been served with this motion and the Agreement. Decl.
27 Nordrehaug at ¶22.

1 **III. CASE BACKGROUND**

2 The description of the case and claims, along with the procedural history, is set forth in the
3 Declaration of Kyle Nordrehaug at ¶¶ 7-14. The Parties engaged in thorough investigation and the
4 exchange of documents and information in connection with the Action which permitted Class Counsel
5 to perform a thorough analysis of the claims. Decl. Nordrehaug, ¶¶ 10 and 14. The Parties participated
6 in mediation on May 3, 2023 with Jeff Ross, Esq., which after arm's length negotiations, resulted in
7 this Settlement. Decl. Nordrehaug, ¶12.

8 **IV. THE SETTLEMENT MEETS THE CRITERIA NECESSARY FOR THIS COURT TO**
9 **GRANT PRELIMINARY APPROVAL**

10 When a proposed class-wide settlement is reached, the settlement must be submitted to the court
11 for approval. 2 H. Newberg & A. Conte, *Newberg on Class Actions* (3d ed. 1992) at §11.41, p.11-87.
12 California "[p]ublic policy generally favors the compromise of complex class action litigation."
13 *Nordstrom Comm'n Cases*, 186 Cal. App. 4th 576, 581 (2010) quoting *Cellphone Termination Fee*
14 *Cases*, 180 Cal.App.4th 1110, 1117-18 (2009). Class action settlements are approved where the
15 proposed settlement is "fair, adequate and reasonable." *Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
16 1801 (1996) (citing *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982), cert.
17 denied, 459 U.S. 1217 (1983)).

18 Preliminary approval is the first of three steps that comprise the approval procedure for
19 settlements of class actions. The second step is the dissemination of notice of the settlement to all class
20 members. The third step is a final settlement approval hearing, at which evidence and argument
21 concerning the fairness, adequacy, and reasonableness of the settlement may be presented, and class
22 members may be heard regarding the settlement. *See Dunk v. Ford Motor Co.*, 48 Cal.App.4th 1794,
23 1801 (1996); *Manual for Complex Litigation, Second* §30.44 (1993); Cal. Rules of Court, rule 3.769.

24 The primary question presented on an application for preliminary approval of a proposed class
25 action settlement is whether the proposed settlement is "within the range of possible approval."
26 *Manual for Complex Litigation, Second* §30.44 at 229; *Gautreaux v. Pierce*, 690 F.2d 616, 621 n.3 (7th
27
28

1 Cir. 1982).² Preliminary approval is merely the prerequisite to giving notice so that “the proposed
2 settlement... may be submitted to members of the prospective Class for their acceptance or rejection.”
3 *Sayaman v. Baxter Healthcare Corp.*, 2010 U.S. Dist. LEXIS 151997, *3 (C.D. Cal. 2010). There is
4 “a presumption of fairness . . . where . . . [a] settlement is reached through arms-length bargaining.”
5 *Wershba v. Apple Computer, Inc.*, 91 Cal.App.4th 224, 245 (2001) (citation omitted); see also *Cho v.*
6 *Seagate Tech. Holdings, Inc.*, 177 Cal. App. 4th 734, 742-45 (2009) (upholding trial court's
7 determination that settlement was “fair, reasonable and adequate” where the settlement “provided
8 valuable benefits to the class . . . that were ‘particularly valuable in light of the risks plaintiff would have
9 faced if she proceeded to litigate her case.’”); *Newberg*, 3d Ed., §11.41, p.11-88. However, the ultimate
10 question of whether the proposed settlement is fair, reasonable and adequate is made after notice of the
11 settlement is given to the class members and a final settlement hearing is held by the Court.

12 **A. The Role Of The Court In Preliminary Approval Of A Class Action Settlement**

13 The approval of a proposed settlement of a class action suit is a matter within the broad
14 discretion of the trial court. *Wershba, supra*, 91 Cal.App.4th at 234-235; *Dunk*, 48 Cal.App.4th 1794.
15 Preliminary approval does not require the trial court to answer the ultimate question of whether a
16 proposed settlement is fair, reasonable and adequate. That final determination is made only after notice
17 of the settlement has been given to the class members and after they have been given an opportunity
18 to voice their views of the settlement or to be excluded from the settlement. 3B J. Moore, *Moore's*
19 *Federal Practice* §§23.80 - 23.85 (2003).

20 In considering a potential settlement for preliminary approval purposes, the trial court does not
21 have to reach any ultimate conclusions on the issues of fact and law which underlie the merits of the
22 dispute, and need not engage in a trial on the merits. *Wershba, supra*, 91 Cal.App.4th at 239-40; *Dunk*,
23 *supra*, 48 Cal.App. 4th at 1807. The Ninth Circuit explains, “the very essence of a settlement is
24 compromise, ‘a yielding of absolutes and an abandoning of highest hopes.’” *Officers for Justice*, 688

25
26 ² California courts look to federal authority on class actions. *Vasquez v. Superior Court*, 4 Cal.3d
27 800, 821 (1971). “It is well established that in the absence of relevant state precedents trial courts are
28 urged to follow the procedures prescribed in Rule 23 of the Federal Rules of Civil Procedure for
conducting class actions.” *Frazier v. City of Richmond*, 184 Cal. App.3d 1491, 1499 (1986), citing
Green v. Obledo, 29 Cal.3d 126, 145-146 (1981).

1 F.2d at 624. The question whether a proposed settlement is fair, reasonable and adequate necessarily
2 requires a judgment and evaluation by the attorneys for the parties based upon a comparison of “the
3 terms of the compromise with the likely rewards of litigation.” *Weinberger v. Kendrick*, 698 F.2d 61,
4 73 (2d Cir. 1982), *cert. denied* 464 U.S. 818 (1983) (quoting *Protective Comm. for Indep. Stockholders*
5 *of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424-25 (1968)). Thus, when analyzing the
6 settlement, the amount is “not to be judged against a hypothetical or speculative measure of what might
7 have been achieved by the negotiators.” *Officers for Justice*, 688 F.2d at 625, 628.

8 With regard to class action settlements, the opinions of counsel should be given considerable
9 weight both because of counsel’s familiarity with this litigation and previous experience with cases
10 such as these. *Officers for Justice*, 688 F.2d at 625; *In re Wash. Public Power Supply System Sec.*
11 *Litig.*, 720 F. Supp. 1379, 1392 (D. Ariz. 1989); *Kirkorian v. Borelli*, 695 F. Supp. 446, 451 (N.D. Cal.
12 1988); *Weinberger*, 698 F.2d at 74. “The recommendations of plaintiffs’ counsel should be given a
13 presumption of reasonableness.” *Boyd v. Bechtel Corp.*, 485 F.Supp. 610, 622 (N.D. Cal. 1979). As
14 a result, courts hold that the recommendation of counsel is entitled to significant weight. *Nat’l Rural*
15 *Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 528 (C.D. Cal. 2004).

16 **B. Factors To Be Considered In Granting Preliminary Approval**

17 A number of factors are to be considered in evaluating a settlement for purposes of preliminary
18 approval. In determining whether to grant preliminary approval, the court considers whether the “(1)
19 the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, (2)
20 has no obvious deficiencies, (3) does not improperly grant preferential treatment to class representatives
21 or segments of the class, and (4) falls within the range of possible approval.” *In re Tableware Antitrust*
22 *Litig.*, 484 F.Supp. 2d 1078, 1079 (N.D. Cal. 2007). No one factor should be determinative, but rather
23 all factors should be considered. The analysis has been summarized as follows:

24 If the proposed settlement appears to be the product of serious, informed, noncollusive
25 negotiations, has no obvious deficiencies, does not improperly grant preferential
26 treatment to class representatives or segments of the class, and falls within the range of
27 possible approval, then the court should direct that notice be given to the class members
28 of a formal fairness hearing, at which evidence may be presented in support of and in
opposition to the settlement.

Manual of Complex Litigation, Second § 30.44, at 229.

1 Here, the Settlement meets all of these criteria for preliminary approval.

2 **1. The Settlement is the Product of Serious, Informed and**
3 **Arm's Length Negotiations by Experienced Counsel**

4 This settlement is the result of extensive and hard-fought litigation as well as negotiations
5 before an experienced and well-respected mediator. Defendant has expressly denied and continues to
6 deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
7 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
8 Class Claims of the Class in accordance with this Settlement.³

9 Class Counsel are experienced and qualified to evaluate the class claims, the defenses asserted,
10 and the risks and benefits of trial and settlement, and Class Counsel are particularly experienced in
11 wage and hour employment class actions, as Class Counsel has previously litigated and certified similar
12 claims against other employers. Decl. Nordrehaug at ¶31. The view of qualified and well-informed
13 counsel that a class action settlement is fair, adequate, and reasonable is entitled to significant weight.
14 *See Kullar v. Foot Locker*, 168 Cal. App. 4th 116, 133 (2008) (the trial court "undoubtedly should
15 continue to place reliance on the competence and integrity of counsel, the involvement of a qualified
16 mediator, and the paucity of objectors to the settlement."); *Dunk*, 48 Cal. App. 4th at 1802.

17 The Parties attended an arms-length mediation session with Jeff Ross, a respected and
18 experienced mediator of wage and hour class actions, in order to reach this Settlement. In preparation
19 for the mediation, Defendant provided Class Counsel with necessary information for the members of
20 the Class, including payroll information and data concerning the composition of the Class. Plaintiff
21 analyzed the data with the assistance of damages expert, Berger Consulting, and prepared and submitted

22
23 ³ The release applicable to the Class is tethered to allegations in the Action as the "Released Class
24 Claims" are "all claims that were alleged, or reasonably could have been alleged, based on the facts and
25 claims stated in the Operative Complaint which occurred during the Class Period, including alleged
26 violations of California Labor Code §§ 201-204, 223, 226, 226.7, 233, 246, 1194, 1197, 1197.1, 510,
27 512, 2802, including the alleged failure to reimburse cell phone expenses, internet expenses, and
28 mileage, and relevant IWC wage orders. Except as expressly set forth in this Agreement, Participating
Class Members do not release any other claims, including claims for vested benefits, wrongful
termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability,
social security, workers' compensation, or claims based on facts occurring outside the Class Period."
(Agreement at ¶¶ 1.38 and 6.2.)

1 a mediation brief and damage valuation to the Mediator. Following this all-day mediation, the Parties
2 agreed to this Settlement. The final settlement terms were negotiated and set forth in the Agreement
3 now presented for this Court's approval. Decl. Nordrehaug at ¶ 5. Importantly, Plaintiff and Class
4 Counsel believe that this Settlement is fair, reasonable and adequate.

5 As consideration for this Settlement, the Gross Settlement Amount to be paid by Defendant is
6 One Million Five Hundred Thousand Dollars (\$1,500,000). The Settlement is all-in with no reversion
7 to Defendant and no need to submit a claim form. Decl. Nordrehaug at ¶ 3.

8 Class Counsel has conducted a thorough investigation into the facts of the class action. Over
9 the course of more than a year, Class Counsel diligently evaluated the Class Members' claims against
10 Defendant. Prior to the settlement negotiations, counsel for Defendant provided Class Counsel with
11 access to necessary information for the Class. In addition, Class Counsel previously negotiated
12 settlements with other employers in actions involving nearly identical issues and analogous defenses.
13 Based on the foregoing data and their own independent investigation, evaluation and experience, Class
14 Counsel believes that the settlement with Defendant on the terms set forth in the Agreement is fair,
15 reasonable, and adequate and is in the best interest of the Class in light of all known facts and
16 circumstances, including the risk of significant delay, defenses asserted by Defendant, and potential
17 appellate issues. Decl. Nordrehaug at ¶ 14.

18 Plaintiff and Class Counsel recognize the expense and length of continuing to litigate and trying
19 this Action against Defendant and then litigating possible appeals which could take several years. Class
20 Counsel has also taken into account the uncertain outcome and risk of litigation, especially in complex
21 class actions such as this Action. Class Counsel is also mindful of and recognizes the inherent
22 problems of proof under, and alleged defenses to, the claims asserted in the Action. Based upon their
23 evaluation, Plaintiff and Class Counsel have determined that the Settlement set forth in the Agreement
24 is in the best interest of the Class Members. Decl. Nordrehaug, ¶ 23.

25 Here, there can be no dispute that the litigation has been hard-fought with aggressive and
26 capable advocacy on both sides. The Parties were represented by experienced and capable counsel who
27 zealously advocated their positions. Accordingly, "[t]here is likewise every reason to conclude that
28 settlement negotiations were vigorously conducted at arms' length and without any suggestion of undue

influence.” *In re Wash. Public Power Supply System Sec. Litig.*, 720 F. Supp. at 1392.

2. The Settlement Has No "Obvious Deficiencies" and Falls Well Within the Range for Approval

The proposed Settlement herein has no "obvious deficiencies" and is well within the range of possible approval. All Class Members will receive an opportunity to participate in the Settlement and receive payment according to the same formula. (Agreement at ¶ 3.2(e).) Based upon 1,282 Class Members who collectively worked 57,527 Workweeks (Agreement at ¶4.1), the Gross Settlement Amount provides a value of \$1,170 per Class Member and \$26 per Workweek and after deductions, the Net Settlement Amount provides an average recovery of \$713.72 per Class Member and a recovery of \$15.90 per Workweek. Decl. Nordrehaug, ¶6.

The calculations to compensate for the amount due to the Class Members at the time this Settlement was negotiated were calculated by Plaintiff's expert, Berger Consulting, in advance of mediation. Class Counsel analyzed the data for putative class members and determined the potential maximum damages for the class claims. For the Class, the maximum value of the claim for unpaid wages due to alleged miscalculation of the regular rate was \$75,565, the maximum value of the claim for unpaid wages due to alleged off-the-clock work was \$562,387, the maximum potential damages for unpaid meal premiums were estimated to be \$119,245 based upon a potential 7.8% violation rate observed in the records and after deduction for meal premiums paid (\$471,858), the maximum potential rest period damages were estimated to be \$381,831 based upon the same potential 7.8% violation rate, and the maximum potential damages for failure to provide expense reimbursement were calculated to be \$68,056 based upon expenses of \$5 per month. In total, the damages for the Class were calculated to have a maximum potential total value of \$2,773,912. In addition, Plaintiff calculated that the maximum value of the potential waiting time penalties was between \$424,859 and \$4,293,315, depending on the predicate violation giving rise to the unpaid wages, and the maximum value of the potential wage statement penalties was \$2,399,100.⁴ Decl. Nordrehaug, ¶6.

⁴ While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses asserted by Defendant, including, a good faith dispute defense as to whether any premium wages for meal or rest periods or other wages were owed given Defendant's position that Plaintiff and Class

1 Consequently, the Gross Settlement Amount represents approximately 54% of the potential
2 maximum damages at issue for the Class in this case, assuming these amounts could all be proven in
3 full at trial.⁵ The above maximum calculations should then be adjusted in consideration for both the
4 risk of class certification and the risk of establishing class-wide liability on all claims. Given the
5 amount of the Settlement as compared to the potential value of the claims, the Settlement is most
6 certainly fair and reasonable.⁶ Clearly, the goal of this litigation has been met. Decl. Nordrehaug, ¶6.

7 Where both sides face significant uncertainty, the attendant risks favor settlement. *Hanlon v.*
8 *Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998). Here, a number of defenses asserted by
9 Defendant present serious threats to the claims of the Plaintiff and the other Class Members. Defendant
10 asserted that Defendant's practices complied with all applicable Labor laws. Defendant argued that all
11 work time was properly recorded and paid for and that there was no miscalculation of the regular rate.
12 Defendant contends that its meal and rest period policies fully complied with California law and
13 Defendant did not fail to provide the opportunity for legally required meal and rest breaks. Defendant
14 established that significant meal period premiums were paid, which could be argued established the
15 lawfulness of their practices. As to expenses reimbursement, Defendant contended that it did not fail
16 to provide reimbursement for necessary business expenses and that there were no such expenses that
17 had not already been reimbursed or that claimed expenses were incurred voluntarily and/or for the

18
19
20 Members were properly compensated. *See Nordstrom Commission Cases*, 186 Cal. App. 4th 576, 584
21 (2010) ("There is no willful failure to pay wages if the employer and employee have a good faith
dispute as to whether and when the wages were due.").

22 ⁵ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
23 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33.

24 ⁶ *See Dunleavy v. Nadler (In re Mego Fin. Corp. Sec. Litig.)*, 213 F.3d 454, 459 (9th Cir. 2000)
25 approving settlement which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman*
26 *v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval
where "the proposed Total Settlement Amount represents approximately 10% of what class might have
27 been awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D.
28 Cal. 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value);
Ma v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class
action settlement worth "somewhere between 9% and 18%" of full verdict value).

1 convenience of employees and is therefore not required reimbursement. Defendant argued that the
2 decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed Martin Corp. v. Superior*
3 *Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*, 64 Cal.App.5th 85 (2021),
4 weakened Plaintiff's claims, on liability, value, and class certifiability as to the meal and rest period
5 claims. Defendant also argues that based on its facially lawful practices, it acted in good faith and
6 without willfulness, which if accepted would negate the claims for waiting time penalties and/or
7 inaccurate wage statements. If successful, Defendant's defenses could eliminate or substantially reduce
8 any recovery to the Class. While Plaintiff believes that these defenses could be overcome, Defendant
9 maintains these defenses have merit and therefore present a serious risk to recovery by the Class. Decl.
10 Nordrehaug, ¶ 24.

11 There was also a significant risk that, if the Action was not settled, Plaintiff would be unable
12 to obtain class certification and thereby not recover on behalf of any employees other than himself.
13 Defendant argued that the individual experience of each putative class member varied with respect to
14 the claims. Defendant could also contest class certification by arguing injury and good faith were case-
15 by-case determinations that precluded class certification. Plaintiff is aware of other cases where class
16 certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App. 5th 885
17 (2019) (denying certification of rest break claims). Finally, even if class certification was successful,
18 as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National Assn.*, 59
19 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even where the
20 class has been certified. While other cases have approved class certification in wage and hour claims,
21 class certification in this action would have been hotly disputed and was by no means a foregone
22 conclusion. Decl. Nordrehaug, ¶ 25.

23 After arm's length negotiations between experienced and informed counsel, the Parties
24 recognized the potential risks and agreed on the Settlement with a Gross Settlement Amount of
25 \$1,500,000.00. As the Court held in *Glass*, where the parties faced uncertainties similar to those here:

26 In light of the above-referenced uncertainty in the law, the risk, expense, complexity,
27 and likely duration of further litigation likewise favors the settlement. Regardless of
28 how this Court might have ruled on the merits of the legal issues, the losing party likely
would have appealed, and the parties would have faced the expense and uncertainty of
litigating an appeal. 'The expense and possible duration of the litigation should be

1 considered in evaluating the reasonableness of [a] settlement.’”
2 2007 WL 221862, at *4 (quoting *In re Mego Financial Corp. Securities Litigation*, 213 F.3d 454, 458
3 (9th Cir. 2000)).

4 **3. The Settlement Does Not Improperly Grant Preferential Treatment To**
5 **Class Representatives or Segments of The Class**

6 The relief provided in the Settlement will benefit all members of the Class. The Settlement does
7 not grant preferential treatment to Plaintiff or segments of the Class in any way. Payments to the Class
8 Members are all determined under a neutral methodology. Each Participating Class Member will
9 receive the same opportunity to participate in and receive payment through a neutral formula that is
10 based upon the Workweeks worked by that individual. Decl. Nordrehaug, ¶4.

11 Plaintiff will apply to the Court for Class Representative Service Payment in consideration for
12 his service and for the risks undertaken on behalf of the class. (Agreement at ¶ 3.2(a).) Plaintiff
13 performed his duties admirably by working with Class Counsel. Decl. Nordrehaug at ¶27. A
14 declaration of the Plaintiff is presented in support. For purposes of this preliminary approval stage, the
15 requested service award of \$10,000 is well within the accepted range of awards for purposes of
16 preliminary approval. *See e.g. Mathein v. Pier 1 Imps. (U.S.), Inc.*, 2018 U.S. Dist. LEXIS 71386 (E.D.
17 Cal. 2018) (awarding \$12,500 where average class member payment was \$351); *Holman v. Experian*
18 *Info. Solutions, Inc.*, 2014 U.S. Dist. LEXIS 173698 (N.D. Cal. 2014) (approving \$10,000 service
19 award where class member recovery was \$375); *Louie v. Kaiser Foundation Health Plan, Inc.*, 2008
20 WL 4473183, *7 (S.D.Cal. 2008) (awarding \$25,000 service award to each of six plaintiffs in overtime
21 class action); *Glass v. UBS Fin. Servs.*, 2007 WL 221862, *16-17 (N.D.Cal. 2007) (awarding \$25,000
22 service award in overtime class action and a pool of \$100,000 in enhancements). As explained in
23 *Glass*, service awards are routinely awarded to class representatives to compensate the employees for
24 the time and effort expended on the case, for the risk of litigation, for the fear of suing an employer and
25 retaliation therefrom, and to serve as an incentive to vindicate the statutory rights of all employees.
26 2007 WL 221862 at *16-17.

27 **4. The Stage Of The Proceedings Are Sufficiently Advanced To Permit**
28 **Preliminary Approval Of The Settlement**

The stage of the proceedings at which this Settlement was reached also militates in favor of

1 preliminary approval and ultimately, final approval of the Settlement. Class Counsel has conducted
2 a thorough investigation into the facts of the class action. Class Counsel began investigating the Class
3 Members' claims before the Action was filed. Class Counsel engaged in an investigation of the claims
4 and conducted a review and analysis of the relevant documents and data. Class Counsel was also
5 experienced with the claims at issue here, as Class Counsel previously litigated and settled similar
6 claims in other actions. Accordingly, the agreement to settle did not occur until Class Counsel
7 possessed sufficient information to make an informed judgment regarding the likelihood of success on
8 the merits and the results that could be obtained through further litigation. Decl. Nordrehaug at ¶28.

9 Based on the foregoing data and their own independent investigation and evaluation, Class
10 Counsel is of the opinion that the Settlement with Defendant for the consideration and on the terms set
11 forth in the Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light
12 of all known facts and circumstances, including the risk of significant delay, defenses asserted by
13 Defendant, and numerous potential appellate issues. There can be no doubt that Counsel for both
14 parties possessed sufficient information to make an informed judgment regarding the likelihood of
15 success on the merits and the results that could be obtained through further litigation. Decl.
16 Nordrehaug at ¶29.

17 In *Glass*, the Northern District of California granted final approval of an overtime wage action
18 although in *Glass* no formal discovery had been conducted prior to the settlement:

19 Here, no formal discovery took place prior to settlement. As the Ninth Circuit has
20 observed, however, '[i]n the context of class action settlements, 'formal discovery is not
21 a necessary ticket to the bargaining table' where the parties have sufficient information
22 to make an informed decision about settlement.'"

23 *Glass*, 2007 U.S. Dist. LEXIS 8476 at *14 (quoting *In re Mego Financial Corp. Securities Litigation*,
24 213 F.3d at 459).

25 Here, Class Counsel was in a better position to evaluate the fairness of this Settlement because
26 Class Counsel received a production of documents through informal discovery, received all necessary
27 information which was evaluated with the assistance of an expert, and performed independent
28 investigations and due diligence to confirm the accuracy of the information supplied by Defendant.

1 **V. THE CLASS IS PROPERLY CERTIFIED FOR SETTLEMENT PURPOSES ONLY**

2 Plaintiff contends that the proposed settlement meets all of the requirements for class
3 certification under California Code of Civil Procedure § 382 as demonstrated below, and therefore, the
4 Court may appropriately approve the Class as defined in the Agreement. This Court should
5 conditionally certify the Class for settlement purposes only, defined as follows:

6 All individuals who were employed by Defendant in California on a non-exempt basis
7 at any time during the Class Period.

8 (Agreement at ¶ 1.5.)

9 The “Class Period” is from September 16, 2018 through July 3, 2023. (Agreement at ¶ 1.13.)

10 **A. California Code of Civil Procedure § 382**

11 Plaintiff seeks certification of this Class for settlement purposes under California Code of Civil
12 Procedure § 382. The California Supreme Court has summarized the standard for determining whether
13 class certification is appropriate as follows:

14 Code of Civil Procedure Section 382 authorizes class actions “when the question is one
15 of a common or general interest, of many persons, or when the parties are numerous,
16 and it is impracticable to bring them all before the court....” The party seeking
17 certification has the burden to establish the existence of both an ascertainable class and
a well-defined community of interest among class members. (*citations omitted*). The
“community of interest” requirement embodies three factors: (1) predominant common
questions of law or fact; (2) class representatives with claims or defenses typical of the
class; and (3) class representatives who can adequately represent the class.

18 *Sav-On Drug Stores, Inc. v. Superior Court*, 34 Cal. 4th 319, 326 (2004).

19 While Defendant reserves all rights to dispute that the Plaintiff can satisfy these requirements,
20 the Parties agree that Defendant will not dispute that these requirements may be satisfied in this case
21 for purposes of settlement only and therefore, the proposed Class should be certified for purposes of
22 this settlement only. (Agreement at ¶ 2.8.)

23 **B. The Proposed Class Is Ascertainable and Numerous**

24 Plaintiff brings this Action on behalf of a Class of non-exempt employees who worked for
25 Defendant during the applicable Class Period. Plaintiff asserts that all of these individuals are
26 ascertainable because the class members can readily be determined through examination of Defendant’s
27 files. Given that the Class consists of approximately 1,282 members, Plaintiffs maintain that
28 numerosity is clearly satisfied. *See Bowles v. Superior Court*, 44 Cal.2d 574 (1955) (class with 10

1 members sufficiently numerous); *Rose v. City of Hayward*, 126 Cal.App.3d 926, 934 (1981) (class of
2 48 members satisfies numerosity requirement.) Here, Plaintiff asserts that the 1,282 individuals who
3 comprise the Class can be identified based on Defendant's records and are sufficiently numerous for
4 class certification. Decl. Nordrehaug at ¶30.

5 **C. Common Issues of Law and Fact Predominate**

6 Predominance of common issues of law or fact does not require that the common issues be
7 dispositive of the entire controversy or even that they be dispositive of all liability issues. 1 *Newberg*
8 *on Class Actions*, Section 4.25 at 4-82, 4-83 (1992). "Predominance is a comparative concept, and 'the
9 necessity for class members to individually establish eligibility and damages does not mean individual
10 fact questions predominate.'" *Sav-On*, 34 Cal. 4th at 334.

11 Commonality exists if there is a predominant common legal question regarding how an
12 employer's policies impact its employees. *Ghazaryan v. Diva Limousine, Ltd.*, 169 Cal. App. 4th 1524,
13 1536 (2008) ("[T]he common legal question remains the overall impact of Diva's policies on its
14 drivers.") Whether the plaintiff is likely to prevail on their theory of recovery is irrelevant at the
15 certification stage since the question is "essentially a procedural one that does not ask whether an action
16 is legally or factually meritorious." *Linder v. Thrifty Oil Co.*, 23 Cal. 4th 429, 439-440 (2003).

17 Here, Plaintiff contends that common questions of law and fact are present, and specifically the
18 common questions of whether Defendant's practices were lawful, whether Class members were
19 lawfully compensated for all hours worked, whether Defendant properly calculated wages, whether the
20 Defendant failed to provide all legally required meal and rest periods to class members, whether
21 Defendant failed to provide required expense reimbursement, and whether Class Members are entitled
22 to damages and penalties as a result of these practices. Decl. Nordrehaug, ¶30. Defendant disputes that
23 common questions predominate but will not oppose such a finding for purposes of this Settlement only.

24 **D. The Claims of the Plaintiff Are Typical of the Class Claims**

25 The typicality requirement requires the Plaintiff to demonstrate that the members of the Class
26 have the same or similar claims as the Plaintiff. "The typicality requirement is met when the claims
27 of the [p]laintiff arise from the same event or are based on the same legal theories." *Tate v.*
28 *Weyerhaeuser Co.*, 723 F.2d 598, 608 (8th Cir. 1983). In *Hanlon, supra*, 150 F.3d at 1020, the Ninth

1 Circuit held that “[u]nder the rule's permissive standards, representative claims are ‘typical’ if they are
2 reasonably coextensive with those of absent class members; they need not be substantially identical.”

3 In the instant case, Plaintiff contends that there can be little doubt that the typicality requirement
4 is satisfied. The Plaintiff worked for Defendant as a non-exempt employee during the Class Period.
5 Plaintiff contends that, like every other member of the Class, he was subject to the same practices and
6 policies of Defendant and was subject to the same defenses. Thus, Plaintiff asserts that the claims of
7 the Plaintiff and the Class Members arise from the same course of conduct by the Defendant, involve
8 the same employment policies and practices of Defendant, and are based on the same legal theories.
9 Decl. Nordrehaug at ¶30. For purposes of settlement, Plaintiff maintains that the typicality requirement
10 is met as to the common issues presented in this case. Defendant disputes typicality but Defendant does
11 not oppose a finding of typicality for purposes of this Settlement only.

12 **E. The Class Representative Fairly and Adequately Protected the Class**

13 Plaintiff contends that the Class Members are adequately represented here because Plaintiff and
14 representing counsel (a) do not have any conflicts of interest with other class members, and (b) will
15 prosecute the case vigorously on behalf of the class. *Hanlon*, 150 F.3d at 1020. This requirement is
16 met here. First, Plaintiff is well aware of his duties as the representative of the class and has actively
17 participated in the prosecution of this case to date. Plaintiff effectively communicated with counsel,
18 provided documents to counsel and participated in the investigation and negotiations in the Action.
19 Second, Plaintiff retained competent counsel who are experienced in employment class actions and who
20 have no conflicts. Decl. Nordrehaug at ¶ 31. Third, there is no antagonism between the interests of the
21 Plaintiff and those of the Class. Both the Plaintiff and the Class Members seek monetary relief under
22 the same set of facts and legal theories. Defendant disputes that the adequacy requirement is satisfied
23 but will not oppose such a finding for purposes of this Settlement only.

24 **F. The Superiority Requirement Is Met**

25 To certify a class, the Court must also determine that a class action is superior to other available
26 methods for the fair and efficient adjudication of the controversy. “Where classwide litigation of
27 common issues will reduce litigation costs and promote greater efficiency, a class action may be
28 superior to other methods of litigation.” *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.

1996). As courts have previously observed:

Absent class treatment, each individual plaintiff would present in separate, duplicative proceedings the same or essentially the same arguments and evidence, including expert testimony. The result would be a multiplicity of trials conducted at enormous expense to both the judicial system and the litigants. “It would be neither efficient nor fair to anyone, including defendants, to force multiple trials to hear the same evidence and decide the same issues.”

Sav-On, 34 Cal. 4th at 340, citing *Boggs v. Divested Atomic Corp.*, 141 F.R.D. 58, 67 (S.D. Ohio 1991).

Here, Plaintiff contends that a class action is the superior mechanism for resolution of the claims as pled by the Plaintiff. While Defendant disputes that class treatment is superior, Defendant does not dispute a finding of superiority in this action for purposes of this Settlement only.

VI. THE PROPOSED METHOD OF CLASS NOTICE IS APPROPRIATE

The Court has broad discretion in approving a practical notice program. *7- Eleven Owners for Fair Franchising v. Southland Corp.*, 85 Cal. App. 4th 1135, 1164 (2000). The Parties have agreed upon procedures by which the Class Members will be provided with written notice of the Settlement similar to those approved and utilized in hundreds of class action settlements. In accordance with the Agreement, Defendant will provide to the Administrator a confidential electronic spreadsheet containing the Class Data. (Agreement at ¶ 4.2.) Within 14 days after receiving the Class Data, the Administrator will mail the Class Notice to all Class Members via first-class U.S. Mail using the most current mailing address information available. (Agreement at ¶ 8.4(b).)

The Class Notice, drafted jointly and agreed upon by the Parties through their respective counsel and to be approved by the Court, includes all relevant information. (*See Exhibit “A”* to the Agreement.) The Class Notice will include, among other information: (i) information regarding the Action; (ii) the impact on the rights of the Class Members if they do not opt out, including a description of the applicable release; (iii) information to the Class Members regarding how to opt out and how to object to the Settlement; (iv) the estimated Individual Class Payment for each of the Class Members; (iii) the amount of attorneys’ fees and expenses to be sought; (v) the amount of the Plaintiff’s service award request; and (vi) the anticipated expenses of the Administrator. Decl. Nordrehaug at ¶32.

The Class Notice will state that the Class Members shall have sixty (60) days from the date that the Notice is mailed to them (the “Response Deadline”) to request exclusion (opt-out) or to submit an

1 objection, which response Deadline shall be extended by 14 days in the event of a re-mailing.
2 (Agreement at ¶¶ 1.42, 8.5, 8.7.) Class Members shall be given the opportunity to object to the
3 Settlement and/or requests for attorneys' fees and expenses and to appear at the Final Approval
4 Hearing. (Agreement at ¶ 8.7.) Class Members who do not submit a timely and proper request to opt-
5 out will automatically receive a payment of their Individual Class Payment. This notice program was
6 designed to meaningfully reach the Class Members and it advises them of all pertinent information
7 concerning the Settlement. Decl. Nordrehaug at ¶32. The mailing and distribution of the Class Notice
8 satisfies the requirements of due process and is the best notice practicable under the circumstances and
9 complies with Rules of Court 3.766 and 3.769(f).

10 **VII. CONCLUSION**

11 Plaintiff respectfully requests that the Court preliminarily approve the proposed settlement and
12 sign the proposed Preliminary Approval Order, which is submitted herewith, and schedule the final
13 fairness hearing for the proposed date of March 21, 2024.

14 Dated: October 9, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

16 By: /s/ Kyle Nordrehaug
17 Kyle R. Nordrehaug, Esq.
18 Attorney for Plaintiff
19
20
21
22
23
24
25
26
27
28